IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4320 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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AHER HAMIR KANA & Ors.
Versus
STATE OF GUJARAT & Anr.

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Appearance:
1. Special Civil Application No. 4320 of 1983
UNSERVED-EXPIRED (N) for Petitioner No. 1,3,6
NOTICE SERVED for Petitioner No. 2,4-5
MS SD VYAS, AGP for Respondent No. 1
MR PV HATHI for Respondent No. 2

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CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 02/04/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

1. By filing instant petition under Articles 226 & 227 of the Constitution, the petitioners have prayed to issue a writ of mandamus or any other appropriate writ or order directing the respondents to pay just compensation or damages to the petitioners for the land adversely affected due to construction of Batadiya dam or to allot to the petitioners any suitable land in the area.

2. The petitioners have lands in the sim of village of Bhatiya and Nandana, details whereof are given in paragraph 2 of the petition. The State of Gujarat has constructed a dam at village Batadiya of Taluka Kalyanpura in Jamnagar District. As a result of the construction of dam, portions of the lands owned by the petitioners were submerged. According to the petitioners, in the first monsoon itself water had entered their fields and caused damage to the standing crops, houses, agricultural implements, etc. and, therefore, they had made applications dated July 16, 1981 to the District Development Officer, Jamnagar, claiming compensation for the loss caused to them. The claim of the petitioners is that as the applications dated July 16, 1981 were not replied, notice dated July 27, 1981 was served through their advocate, to which the respondent no.2 had given common reply dated August 12/13, 1981 stating that as the petitioners had agreed not to claim compensation, they were neither entitled to compensation nor to damages. It is averred by the petitioners that as the lands belonging to the petitioners are sub-soiled due to construction of Batadiya dam, they are entitled to compensation and/or damages. Under the circumstance, the petitioners have filed instant petition and claimed reliefs to which reference is made earlier.

3. It may be stated that the learned advocate of the petitioners was elevated on Bench in June 1990 and, therefore, affidavit-in-reply of the respondent no.2 could not be served on the petitioners. The petition was placed for hearing before the Division Bench of this Court on January 8, 2002 and on that day, the following order was passed:

"Six petitioners have jointly filed this petition before this Court through their learned counsel, who has been later on elevated as Judge of this Court. Therefore, fresh notice is issued to the

petitioners to make alternate arrangement. Accordingly, notice is served to petitioners No. 2, 4 and 5, but it is returned unserved Qua petitioners No.1, 3 and 6, as it is reported that, they have expired during pendency of this petition.

Under the circumstances, we have no option but to dismiss this petition Qua petitioners No. 1, 3 and 6 as abettor, and accordingly it is dismissed.

Now the office may place this petition for hearing on merits Qua petitioners No. 2, 4 and 5."

In view of the above quoted order, the Court is required to consider the claim advanced by the petitioner nos. 2, 4 and 5 in the petition. Those petitioners have neither appeared in person nor through their lawyers and, therefore, this being very old matter, the Court has decided to dispose of the petition on merits with the assistance of Mr.P.V.Hathi, learned advocate appearing for the respondent no.2, and Ms.S.D.Vyas, learned Assistant Government Pleader appearing for the respondent no.1.

4. The contents of the reply dated August 12/13, 1981, which is produced at Annexure-C to the petition, would indicate that the petitioners had agreed not to claim compensation for parts of their lands, which were likely to be submerged because they were to get benefit of water for cultivating the lands which were in their possession. Mr.Jitendra Mohanlal Virani, Executive Engineer, Panchayat Irrigation Division, who has filed affidavit-in-reply on behalf of the respondent no.2, has clearly highlighted this aspect in paragraph 5 of the reply. In fact, paragraph 5 of the reply would indicate that different agreements were entered into between the petitioners and the respondents, wherein the petitioners had agreed not to claim compensation for the parts of their lands which were submerged. In view of the agreements executed by the petitioners, we are of the opinion that the petitioners are estopped from claiming compensation or damages. It may be stated that the petitioners have remained in possession of their holdings and enjoyed benefits of irrigating their lands from the water received due to the construction of the dam. The Court does not find violation of the provisions of Articles 14 and/or 19 of the Constitution as is claimed by the petitioners more particularly in view of voluntary

agreements entered into between them and the respondent authorities. Under the circumstances, the petition is liable to be dismissed.

For the foregoing reasons, the petition fails, and is dismissed. Rule is discharged. There shall be no order as to costs.

(J.M. Panchal, J.)

(A.M. Kapadia, J.)

Rajendra